DOCUMENT RESUME

ED 153 518 HE 009 790

AUTHOR Dahl, Randall W.
TITLE Legal Problems in the Solicitation and Administration of Private Donor Funds in Higher Education.
INSTITUTION Kentucky Univ., Lexington, Dept. of Higher Education.
PUB DATE Apr 77
NOTE 36p.; Paper prepared for the Seminar in Legal Problems in Higher Education.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Endowment Funds; Ethics; Federal Legislation; *Fund Raising; *Higher Education; Institutional Administration; *Legal Problems; Legal Responsibility; *Private Financial Support; Speeches; State Legislation; Trustees; *Trusts (Financial)

ABSTRACT

A topical overview of the solicitation and administration of private financial support for institutions of higher Education is presented, with particular attention to associated legal problems, both actual and potential. Contextual considerations discussed include the role of private donor funds in both private and public higher education and general legal considerations such as the distinction between "trusts" and "gifts" and the "publicness" of a trust or gift. Legal problems in solicitation are described, including those related to corporate giving, the difference between subscriptions and requests with respect to collection, restrictions on contributions, state and federal regulation of solicitation, and "special" legal problems in solicitation. A discussion of legal problems in the administration or use of private financial support provides information on donor restriction, altering the conditions and restrictions of gifts and bequests, institutional trustee management responsibilities, and other administrative concerns, such as misappropriations of restricted funds, internal administrative procedures, emerging forms of private giving and donation "plans," and certain matters of legal ethics. (SPG)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED153518

LEGAL PROBLEMS IN THE SOLICITATION AND ADMINISTRATION OF PRIVATE DONOR FUNDS IN HIGHER EDUCATION

Prepared for:

Seminar in Legal Problems in Higher Education

Department of Higher Education
University of Kentucky

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Randall W. Dahl

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

Randall W. Dahl

April 28, 1977

I. INTRODUCTION

The purpose of this paper is to present a topical overview of the solicitation and administration of private financial support for institutions of higher education, with particular attention to associated legal problems, both actual and potential. Consistent with the objectives of the seminar, the limitations of space, and the perspective and limited relevant expertise of the writer, breadth rather than depth of coverage of specific issues is the predominant orientation of this presentation.

The presentation is divided into three major sections--Contextual Considerations, Legal Problems in Solicitation, and Legal Problems in Administration--with each further subdivided into specific areas of interest and concern. It should be noted, however, that such a division, particularly with respect to solicitation and administration, is to some extent artificial due to a significant degree of operational interdependence.

II. CONTEXTUAL CONSIDERATIONS

The topical element "legal problems" implies a context of the periodic intersection of at least two dimensions. In this case, the relevant dimensions are higher education structures and practices, and selected legal principles. A general consideration of each dimension is reasonably prerequisite to an examination of the points of intersection--activities undertaken in the solicitation and administration of private donor funds--and is the focus of the succeeding sub-sections of this paper.

Higher Education and Private Donor Funds

Throughout its history, American higher education has enjoyed significant financial support from private sources. Although private donor funds no longer

represent the principal form of financing higher education, the role of such funds continues to be significant. Scully (1976) reported that private donor support for institutions of higher education totaled $2.16 billion in fiscal 1975. While this recession year total reflected an absolute decrease of $80 million, or 3.6 percent, compared to fiscal 1974, it nonetheless constituted a significant resource, representing slightly less than half of the estimated $4.4 billion collected in tuition and fees by all institutions during fiscal 1975 as reported by the National Center for Education Statistics (1976). While the bulk of the private donations continued to be directed toward private institutions, public institutions received approximately one-fourth of the total. Of considerable note was the fact that, of all institutional groups, only the public colleges and universities recorded an increase in private receipts from fiscal 1974 to fiscal 1975; according to Scully (1976), public institutions enjoyed a 9.4 percent increase, while private universities absorbed an eight percent decrease and private male colleges suffered a decrease of 25.3 percent.

Figures reported by the American Association of Fund-Raising Counsel (1976) indicated that the largest single source of private donations to higher education in fiscal 1975 was again the individual donor, accounting for 46.4 percent of all donations. Within this group, non-alumni provided slightly more than half of the total contributed. However, unlike private philanthropy in general, in which individuals accounted for 79.7 percent of the total amount contributed in fiscal 1975, private sources <u>other</u> than individuals are particularly important to colleges and universities. Among non-individual donors, foundations and corporations are especially important sources for institutions of higher education, in both absolute and relative terms. The AAFRC fiscal 1975 data indicated that foundations supplied 23.0 percent and corporations supplied 16.5 percent of all private funds for higher education; in contrast, for all recipients of

private philanthropy, foundations and corporations provided only 7.5 percent and 4.5 percent, respectively, of the total contributed.

As noted, public institutions continued to expand their "share of the market" in the receipt of private donor funds. In fact, according to Magarrell (1976), three public institutions were among the "top 10" college and university recipients for fiscal 1975: the University of California System, third; the University of Minnesota, sixth; and, the University of Michigan, ninth (Harvard University was again ranked first, with receipts of $52.4 million, and MIT, receiving $21.7 million, was ranked tenth).

The role of private donor funds in public sector institutions is partially reflected in the division of receipts between current operations and capital purposes. As summarized in a Chronicle of Higher Education "Fact File" (1976), three-quarters of the total support to public colleges and universities from private sources was directed to current operations, implying the immediate application of such funds to current and short-term expanded educational programs of the institutions. Such a pattern of giving (and by implication, institutional solicitation), in which private donor funds are used principally to supplement and extend governmental appropriations, is consistent with the role of private donor funds in public sector institutions suggested by the National Association of State Universities and Land Grant Colleges (1969). The Association summarized the impact of private donor funds as the "margin for excellence" for public colleges and universities, as articulated by Malcolm Moos, President Emeritus of the University of Minnesota:

> If you look in each of our 50 states, you will not find any truly great public university which has been financed entirely by state appropriations. Rather you will find that all public universities that we associate with excellence receive generous private support. There can be no doubt. This is where the margin between a good and a great

> institution lies. Legislators build basically sound public universities, but great public universities are built by private bequests, gifts and grants (p. 15).

General Legal Considerations

In general, and as applied to institutions of higher education in particular, the legal framework of the solicitation and administration of private donor funds is relatively well defined and elaborated. As opposed to the "case law" emphasis of higher education "glamour concerns" such as academic freedom and tenure, selective admissions, and affirmative action, statutory law is instrumental in the area of private financial support. Of particular importance is "the law of charitable trusts" which focuses on the relationships between individuals and organizations in matters involving the charitable exchange of valuable property.

There are two basic forms of private donation, or relationships, relevant to institutions of higher education--"trusts" and "gifts." Alexander and Solomon (1972) have characterized the trust as "a legal device invented by man to preserve interest in his property and to 'project his personality into the future'" (p. 266), a relationship in which the "legal title pertaining to regulation and dispensation is withheld from the beneficial owner" (p. 266). The concept of trusts has been traced to the thirteenth century and the Statute of Mortmain (literally, "dead hand"), and its subsequent development has been well-described by Blackwell (1960). Gifts, on the other hand, do not involve such a duality of ownership. The legal distinction described by Alexander and Solomon is that "an absolute gift is the total transfer of the 'entire interest, beneficial as well as legal'" (pp. 265-266), thus conveying exclusive ownership to the recipient of the gift.

The distinction between trusts and gifts is particularly important with respect to enforcement of the exchange or application of the property involved. As noted, one form of private donation is the absolute gift. If the donor decided that he did not approve of the manner in which the gift was being used, he would be unable to either force compliance with a particular purpose or withdraw the gift, in that complete ownership of the gift had passed to the recipient--there would not be the necessary two parties of legal standing for a suit. If the gift were made with specific instructions as to its application--an absolute gift with detailed conditions--compliance with the conditions could be effected through legal action. According to Blackwell (1960), legal action in such a situation must be initiated by the Attorney General of the appropriate state rather than the original donor.

In the case of trusts, the role of the donor in enforcement is generally more direct, but again is contingent upon the type of trust arrangement involved. As with gifts, there are two basic types of trusts. The first type, styled a "three-party trust" here, involves a donor, a recipient or beneficiary, and a trustee serving a fiduciary capacity. In this case, all three parties have certain legal interests in the property, with the beneficiary and trustee sharing ownership of the property. The trustee holds and invests the property, and provides appropriate income to the beneficiary which has accounting and management responsibilities only. Legal action for enforcement of the terms of the trust could occur in any of the six permutations of three binary relationships.

The second type, here a "two-party trust," involves a donor and an institutional recipient which acts both as beneficiary and trustee. In this case, there is not an easily identifiable private beneficiary, although certain classes of individuals to be benefitted by the proceeds of the trust may be specified (for example, students in a particular field of study). According to

Blackwell (1960), initiation of legal action for enforcement of the trust again rests with the Attorney General of the appropriate state, as in the case of the absolute gift with detailed conditions.

According to Karst (1960), this variance in enforcement procedures is problematical both as a symptom of a lack of unification in trust and law, more practically, in facilitating compliance and efficiency in the administration of charitable trusts to more adequately protect the legitimate interests of the beneficiaries. Karst noted that while the beneficiaries of many public charities (including colleges and universities) were insufficiently organized, actually and potentially, to enforce the conditions or efficiency of the trust, the bulk of American court decisions have denied suits by founders to enforce their trusts. Accordingly, he concluded that promoting the effective conduct of charitable trustees was an appropriate state role, and that effective state involvement could assure a generally higher level of performance by charitable trusts.

A final general legal consideration is the "publicness" of a trust or gift. In any gift or trust, to the extent that a state or state agency is involved as a party, the use or application of the property is construed as "state action," in which case Constitutional limitations may be applied on the basis of the Fourteenth Amendment. Such a situation is, of course, a "given" for a public college or university receiving private donations. Further, as reported by Chambers (1972), the court decided in Bank of Delaware v. Buckson (1969) that the inclusion of a public high school principal and the Chief Justice of the State of Delaware on a three-member scholarship award committee for a 1917 trust "gave the operation sufficient color of 'state action' to bring it within the sweep of the Fourteenth Amendment" (p. 73). The trust provided for the maintenance and education of a white male student, and the only state link with the trust was

through the membership of the award committee. The court decision, characterizing the operation of the trust as "state action," had the result of eliminating the racial condition of the trust (an effect sought by the trustee bank).

The association of state action with public colleges and universities is clear and easily anticipated, and the absence of a similar association with private institutions would seem similarly clear. However, according to John Darsie (1977), University of Kentucky General Counsel, a theory characterizing the acceptance and operation of a trust by a private institution as state action under certain conditions has been advanced, but without noted success. Under this theory, all bequests, would be so characterized on the premise that the probating of the will requires, and is the result of, state action!

The laws and legal principles relevant to the solicitation and administration of private donor funds in higher education are extensive, relatively sophisticated and complex, and, like most other elements of the law, not easily converted to general principles. There would appear to be two major "general legal considerations" in this area: first, each donation may well present unique circumstances and issues; and second, the determining factor in all private donations whether gift or trust is the manner and conditions initially attendant to the donation, ordinarily embodied in the legal instrument of giving.

III. LEGAL PROBLEMS IN SOLICITATION

The solicitation of funds from whatever source is a major activity of colleges and universities. In public institutions, the solicitation of financial support from private sources--commonly known as "Development"--is an area of substantial expansion, as at least partially evidenced by the increasingly frequent appearance of "Development Officer" notices in the "Positions Available" section of The Chronicle of Higher Education. For administrators in public colleges and universities in particular, the salient intersections of the legal

and higher education dimensions include corporate giving, subscriptions versus bequests, restrictions imposed by donors, state and federal regulation of solicitation activities, and "special" problems.

Corporate Giving

Consistent with Brubacher's (1971a) observation that "the recent gradual transition of the control of wealth from individual to corporate hands has pointed to industrial and commercial corporations as one possible source for new funding" (p. 96), business corporations represented in fiscal 1975 the third largest source (behind individuals and foundations) of private financial support for colleges and universities, providing approximately one-sixth of the total contributed. In terms of proportion of support provided, corporations were nearly four times as important a source for colleges and universities as for charitable organizations in general.

However, the legality of corporate charitable contributions is a relatively recent development. According to Blackwell (1960), the prevailing legal opinion on corporate giving during the first half of this century was consistent with the decision in Dodge v. Ford Motor Company (1919) that "directors of commercial corporations had no right to 'give away' their stockholders' money" (p. 215), unless it could be demonstrated that "direct and substantial benefits would accrue to the organization as a result of the gift" (p. 216). Blackwell also noted, however, that several states, following the 1917 initiative of Texas, authorized charitable contributions by corporations by specific legislation. By 1941, ten states had adopted such legislation, and 12 years later the restrictive rule of 1919 was rendered practically irrelevant by the Supreme Court of New Jersey in A.P. Smith Manufacturing Company v. Barlow (1953). Blackwell further noted that the United States Supreme Court dismissed the

appeal of this case, thereby implicitly upholding the constitutionality of the New Jersey law and similar laws in other states. According to Brubacher (1971a), the court stated in its rationale that "modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities in which they operate" (p. 98).

A limited restriction on this authorization (and encouragement) for corporate donations applies in the case of public utilities. Blackwell has reported that with few exceptions, state utility commissions have not allowed claims of charitable contributions as operating expenses of the utility. Allowing such expenses could eventually be shifted forward to consumers in the form of higher rates through the normal rate-setting process.

Corporations have largely accepted the rationale of the New Jersey Supreme Court, and have to some extent incorporated the earlier "direct benefit" principle, viewing contributions to colleges and universities as an investment. This combined rationale is particularly apparent in a recent Allied Chemical Corporation "Position Paper" (1977) in which formal educational contribution goals were recommended for adoption by the Board of Directors. The Allied Chemical plan centers on several giving strategies--including a flat one percent of pre-tax net income--any of which if generally adopted would increase the fiscal 1974 total of $445 million to $1.5 billion annually by 1982.

Subscriptions versus Bequests

Chambers (1967) has identified a second problem area in solicitation as the difference between subscriptions and bequests with respect to collection. The prime difference with respect to collection is that with bequests, or donations made pursuant to the provisions of a will, the court provides the initial administration of the donation through the probate process. Such early court

involvement is not the case with regard to subscriptions, as the initiative for legal action to enforce the subscription falls to the donee, or recipient.

A subscription, as described by Chambers, is "a promise or contract to make a gift" (p. 227) which may be either oral or written. In terms of enforcement, the principal issue is whether the subscription in fact is "a contract binding upon its maker during his life and upon his estate after his death" (p. 228), or a "mere naked promise . . . not enforceable in court" (p. 227). In making the decision, the chief criterion is whether the subscription was suported by "consideration"--defined by Chambers as "a reciprocal promise or act by the promisee which is a detriment to the promisee or a benefit to the promisor" (p. 227)--thus establishing an enforceable contract.

Three legal theories have been used by the courts to support a conclusion of "consideration" and thus confirm the validity of subscription contracts, identified by Chambers as the doctrines of (1) promissory estoppel, (2) mutuality of consideration, and (3) public benefit or public policy. In promissory estoppel, "consideration" is established when the donee performs some act in reliance on the subscription or promise. Mutuality of consideration is particularly relevant to colleges and universities employing "pledge cards" for annual or special giving fund drives, in that the promise of each subscriber is construed as the "consideration" for each of the others. It is apparently not uncommon for a message to that effect to appear on the pledge card itself. The third theory, the doctrine of public benefit or public policy is quite broad, allowing "consideration" to be established by "the mere fact that the enterprise proposed to be financially supported is a useful and worthy one that will conduce to the public welfare" (p. 228).

In tracing the development of the legal status of charitable subscriptions, Blackwell (1960) observed that "early American courts were almost unanimous in

their refusals to enforce charitable subscriptions" (p. 223), based chiefly on theories developed in the common law of England. He noted, however, that as early as 1817 the doctrine of promissory estoppel had been invoked to legally validate a subscription, and that mutuality of consideration had been used by a court in an 1845 case. Promissory estoppel* was first applied specifically to higher education in 1829 in University of Vermont v. Buell, in which, according to Blackwell, the court found that a subscription taken to help rebuild the institution after a fire was "legally enforceable because the university corporation had initiated work of reconstruction in good faith, relying upon the promise to support the work" (p. 224).

Finally, in a case illustrative of the doctrines of promissory estoppel and public benefit or public policy, In re Estate of Louis Lipsky (1965), the court held that an oral promise to pay $500 to the United Jewish Appeal of New York was enforceable against the estate of the promisor after his death. Promissory estoppel was invoked on the basis of the fact that the United Jewish Appeal had in recent years borrowed as much as $60 million from several banks to finance its continuing charitable programs, on the strength of its substantial outstanding pledges. In this case incurring the liability of the loan was considered an act in reliance on the promise. The influence of the public benefit/public policy doctrine is clear, and the generally favorable attitude of the courts toward subscription donees is well summarized in the words of the New York court reported by Chambers (1967) that "A review of the authorities would indicate that the trend of judicial decision during the last century has been towards the enforcement of charitable pledges almost as a matter of public policy" (p. 228).

*Blackwell also noted that the term "promissory estoppel" was coined by legal commentators specifically to apply to the enforcement of charitable subscriptions, in order to distinguish that theory from the traditional doctrines of "consideration" and "estoppel."

Restrictions on Contributions

Restrictions or conditions of some kind are a common feature of private donations to institutions of higher education, and pose potential if not actual legal problems in both the solicitation and administration of such donations. The principal institutional solicitation concern in this area is the avoidance of donor restrictions that are illegal or burdensome. According to Darsie (1977), donor restrictions represent one of the three most frequent "private donor funds problems" at the University of Kentucky. Illegal restrictions, addressed in greater detail in Section IV, involve such issues as the exclusion of certain classes of potential recipients of the benefits of private donations, or donor manipulation for tax advantage.

"Burdensome" donor restrictions can involve a variety of stipulations ranging in effect from generally nettlesome administrative procedures, to "cosmetic" institutional programs and activities, to potentially significant intrusions on the institution's determination of its educational program. The latter types of burdens represent the greatest concerns to colleges and universities, and are frequently the subject of extensive negotiations. Two examples are illustrative of such burdensome donor restrictions. First, in the event of a significant donation, such as a physical "home" for an existing or proposed educational program, the donor may have specific ideas concerning certain structural or operational elements of the building (wing, annex, etc.) that he or she is funding which may be at variance with either the plans of the institution or objective program needs. In order to secure the gift, the institution may have to compromise and at least partially accommodate the legitimate if occasionally misinformed or misdirected opinions and desires of the donor.

A second example, currently existing at the University of Kentucky, illustrates more direct potential influence on the substantive programs of an institution. As described by Raymond Hornback (1977), Vice President for University Relations, the University of Kentucky was the recipient of a $3 to $8 million bequest--the largest ever received by the institution--which specified that the funds were to be used to support the training of general practitioner physicians. Hornback noted, however, that the long-term plan of the College of Medicine, consistent with current trends in medical education, is to "phase out" the general practitioner program in favor of training in medical specialties, thus raising the possibility of a conflict with the conditions of the bequest. According to both Hornback and Darsie (1977), on the basis of the stated terms of the bequest, a significant conflict in this particular case is unlikely. It should be noted that in addition to illustrating the potential for significant influence of donor restrictions on the educational programs of the institution, this example also underscores the crucial role of the legal instrument of the gift (here the donor's will) and its particulars in establishing the parameters within which future conflict may be resolved. Although the potential for intrusion on the educational programs and policies of the institution will, of course, vary widely across the spectrum of colleges and universities, Hornback's observation that donors tend to be moneyed people who are used to making policy (with many major donors sitting on corporate or other outside boards) represents a useful general caveat for collegiate development personnel.

State Regulation of Solicitation

An emerging legal problem of potentially significant impact on colleges and universities is the expanding interest of the various states in the regulation of charitable solicitations. In a survey of the 50 states, the District

of Columbia and Puerto Rico, Hopkins (1975) found that 27 states and the District of Columbia have some form of charitable solicitation regulation statute. On the basis of Hopkins' findings, four categories of state regulation of solicitation can be identified:

(1) Jurisdictions with no requirements--23 states (including Kentucky) and Puerto Rico;

(2) Jurisdictions with total exemptions for colleges and universities--11 states;

(3) Jurisdictions with limited exemptions for colleges and universities--6 states; and,

(4) Jurisdictions regulating solicitations by colleges and universities--10 states and the District of Columbia.

According to Hopkins, "regulation of solicitation basically means compliance by non-exempted organizations with two requirements: registration and periodic reporting" (p. 289). However, these relatively nominal requirements can prove complex in application, particularly for out-of-state institutions, as indicated in Hopkins' summary observation that "the result, even now, is a bewildering myriad of widely varying registration and reporting requirements, each state (and in some instances, city, municipality, and/or county) having its own forms, due dates, and accounting principles" (p. 290). The possible complexities of multiple jurisdiction regulation are illustrated in the peculiar features of the relevant statutes in three states each associated with the fourth category of regulation described above, as reported by Hopkins. In North Carolina, in-state colleges and universities are exempted, as are those out-of-state institutions accredited by the Southern Association of Colleges and Secondary Schools; however, no exemption is granted to any institution employing a professional fund-raising counsel or professional solicitor. In Iowa, soliciting organizations must be "incorporated under Iowa law, or be otherwise formally authorized to do business in the state" (p. 300). In Florida, "any

charitable organization that receives a contribution from a Florida source is considered to be soliciting and therefore required to register" (p. 300) whether or not the organization is or has engaged in active solicitation.

According to Kirch (1977), enforcement of the various state statutes is lax, and institutional compliance is quite limited. On the basis of the District of Columbia law and the direct mail solicitation practices of major colleges and universities in particular, he has concluded that "virtually every major college and university in the country" (p. 11) should be registered with District's Office of Economic Development. Upon review of the pertinent files, however, Kirch found that,

> except for two women's colleges, two state universities, and the local alumnae chapters of several of the seven sisters colleges, not one of the nations major institutions of higher learning has obtained a certificate to raise money from alumni and others in the nation's capital. None of them are filing financial statements, college charters and by-laws, and other information. All of them are breaking D.C. law (p. 11, emphasis added).

If Hopkins' (1975) observation that the states are evidencing an increasing interest in enforcing existing charitable solicitation regulations, a prompt effort to comply would appear to be a prudent course of action for most colleges and universities. Such efforts will require legal advice to ensure that the varying requirements of the multiple jurisdictions pertinent to the solicitation posture of the particular institution are fully met. Given the range of regulatory statutes and exemption provisions, several possible compliance problems can be identified. First, even though colleges and universities may be specifically exempted, initial registration and nominal periodic reports may be required. Secondly, exemptions might be "automatic" only for institutions located within the jurisdiction, with others having to submit an application. And finally, in those jurisdictions providing a limited exemption to colleges

and universities, the exemption may (and frequently does, according to Hopkins) apply only to the solicitation of alumni, students and their families, or others directly associated with the institution. The fact that non-alumni represent the largest single source of private financial support for colleges and universities, emphasizes the importance of thorough and carefully considered compliance efforts.

Finally, as if the prospect of having to comply with varying solicitation regulation requirements in at least 11 and as many as 28 jurisdictions (for institutions mounting nation-wide solicitation efforts) were not enough, Hopkins has indicated that regulation may also occur at the municipal and/or county level. He identified seven major cities with such regulatory ordinances--Atlanta, Dallas, Los Angeles, Miami, Minneapolis, New Orleans, and Seattle (including the surrounding county)--and warned soliciting organizations that "undoubtedly, there are many other municipalities and counties regulating charitable solicitations within their boundaries " (p. 309).

Federal Regulation of Solicitation

On the opening day of the 95th Congress, January 4, 1977, Representative Charles H. Wilson (D, California) introduced House Bill (H.R.) 41, "A bill to amend title 39, United States Code, to require the furnishing of certain information in connection with the solicitation of charitable contributions by mail, and for other purposes" (The Congressional Record, 1977, p. H79). H.R. 41, which was assigned to the House Committee on the Post Office and Civil Service, represents the most recent of several initiatives to establish some measure of federal regulation of the solicitation of charitable contributions.

With its emphasis on the disclosure of financial information, the basis of the Wilson bill appears to be consistent with the general theme of "consumer

protection" identified by Hopkins (1977) as the central thrust of similar legislative efforts in previous Congresses. The basic provisions of H.R. 41 as summarized by Rep. Wilson, were reported in The Congressional Record (1977):

> Specifically, the bill would require a charitable organization which solicits "in any manner or through any means, the remittance of a contribution by mail" to state at the time of solicitation its legal name and principal business address, the purpose of the solicitation and the intended use of the contribution, and the percentage of the previous year's contributions which actually went to the charitable purpose--as opposed to fund-raising and administrative costs. Also, the organization must provide more detailed financial information upon written request and state that such information is available (p. E57).

As proposed, the provisions of H.R. 41 would be administered according to rules and regulations promulgated by the Postal Service, and would extend to radio and television solicitations of more than one minute as well as mailed solicitations. The disclosure requirements of the bill would not apply to college and university solicitations directed exclusively to the institution's students. faculty, alumni, members of governing boards or the families of such individuals.

According to Hopkins (1977) previous legislative initiatives in this area at the federal level have been directed, like H.R. 41, toward the protection of recipients of solicitations and of the broad array of "authentic" charitable organizations, but have located the regulatory responsibilities in various parts of the federal bureaucracy, including the Departments of Commerce and the Treasury. Hopkins has also observed that two particular issues of substance have been treated differently in different bills: first, there has been little agreement on exemptions for particular classes of charitable organizations; and second, there has been no agreement as to whether the federal legislation should pre-empt state and local laws regulating charitable solicitations. With respect to the latter, Hopkins has noted such possible compromises as federal regulation only of interstate solicitations, and a more tentative simple

coordination of the various jurisdictional requirements. In the general governmental movement toward more effective consumer protection, and in the wake of substantial abuses in charitable solicitation,* it seems likely that, whatever the administrative particulars, some form of federal regulation of solicitation by charitable organizations is coming in the near future, regardless of the opposition of such national organizations as the Council for the Advancement and Support of Education (CASE) reported by Magarrell (1977) to federal regulation of solicitation in general and to H.R. 41 in particular.

Finally, potential federal involvement in the solicitation policies and practices of institutions of higher education has been identified in at least one other area. In "Washington Notes," The Chronicle of Higher Education (1976) reported that the Office of Management and Budget (OMB) proposed a regulation that would prevent institutions from accepting gifts--including matching funds and endowed chairs--from any person or organization they do business with. In response to the vigorous protests of the American Council on Education and other national educational associations, the O.M.B. clarified its proposal by noting that any interference with "the normal fund-raising activities of colleges and universities was inadvertent" (p. 7).

"Special" Legal Problems in Solicitation

In addition to the legal concerns in the solicitation of private financial support described in the preceding portions of this Section, two relatively special additional potential problems can be identified. Somewhat simplistically, these are (1) non-lawyers acting like lawyers, and (2) lawyers acting insufficiently

*Rep. Wilson, in his remarks reported in The Congressional Record (1977), noted the recent case of the Maryland-based Order of the Fallotine Fathers: "Their fund-raising operation raised over $20 million, but less than five percent of that amount went to the ostensible charitable purpose" (p. E56).

like lawyers. In the case of the former, a college or university fund-raiser may be strongly tempted, in order to facilitate the donation, to provide a potential donor with various forms of advice relating to particular tax advantages, methods of giving, and similar matters. A non-lawyer engaging in such activities runs a serious risk of effectively practicing law without a license, which could result not only in criminal penalties for the fund-raiser, but (particularly in the event that the advice provided proved erroneous) in the donor reneging on the gift as well.

The latter problem relates to the provision of tax advice to the potential donor by the institution's attorney. Williams (1975) has summarized this potential problem as follows:

> In the first instance, it is clear that a lawyer for an institution may assist a donor and the donor's lawyer in making maximum use of the charitable deductions legitimately permitted by the Internal Revenue Service Code. But at the same time, minimal standards of the profession require fair and honest dealing with the Internal Revenue Service (p. 253).

IV. LEGAL PROBLEMS IN ADMINISTRATION

Once private financial support has been successfully solicited, the recipient institution has various substantial responsibilities for its administration or use. In the case of public institutions in particular, many administrative requirements may be established by state law. There are, however, several potential problem areas in administration in which generalized observations are relevant, including donor restrictions, the alteration of restrictions and conditions, investment and other responsibilities of trustees, and "other concerns."

Donor Restrictions

As noted in the preceding Section of this paper, private donations can--and the great majority do--involve a wide variety of conditions or restrictions on

the uses to which the donation may be put. To the recipient and/or administering institution, such restrictions range from merely idiosyncratic to substantive in effect. According to University of Kentucky Legal Counsel John Darsie (1977), the principal legal problems in this area involve donor restrictions of two types: restrictions relating to race or sex of an individual benefitting from a gift administered by the institution; and, restrictions associated with the manipulation of tax liability.

For public colleges and universities, the doctrine of "state action" described in Section II allows the provisions of the Fourteenth Amendment to effectively bar discrimination on the basis of race. While the problems of racial restrictions are now (and have been for some time) simply avoided by the refusal of public institutions to accept such gifts, such restrictions were not uncommon--and may occasionally still be found in bequests--in gifts made during the first half of this century. However, the Constitutional prohibitions preventing a public college or university from administering a racially restricted gift do not impower the institutions to alter or ignore such restrictions in order to regain the beneficial use of the gift. As will be noted in greater detail in the succeeding subsection, the alteration of such restrictions, whether Constitutionally prohibited or not, can be effected only upon the authority of the court. In the case of an illegal restriction, the practical administrative problem is to recognize the illegality and the necessity of court action for relief. Religious restrictions in public institutions are subject to the same prohibitions and remedies as those related to race.

Without the necessary link of "state action," private institutions appear to be relatively free legally to administer--and to continue to accept--gifts including racial restrictions. Such institutional practices, however, could result in action by the Internal Revenue Service to withdraw the institution's tax exempt status according to Myers (1975).

Institutional responsibilities relating to donor restrictions disciminating on the basis of sex are presently unclear according to Darsie (1977). In the absence of a Constitutional prohibition, institutions must rely on federal and state statutes for guidance. Various federal statutes (and Executive Orders) pertain to discrimination on the basis of sex, and in application, such statutes are interpreted principally by the Department of Health, Education, and Welfare (HEW) through rules, regulations, and guidelines. With respect to the administration of private donor funds, the HEW regulations are still in the process of development. According to Darsie, current general guidelines allow the continued administration of funds restricted on the basis of sex if the total package of funds (e.g., total student financial aid funds) is balanced or non-discriminatory overall. Such a practice at the University of Wisconsin was recently reported "In Brief" by The Chronicle of Higher Education (1976). Although the Board of Regents had adopted a policy discouraging discriminatory wording in gifts, the University recently accepted a $7800 bequest for financial aid to "a Christian girl or girls" (p. 2). The University justified its acceptance of the bequest by placing the funds in its general scholarship pool and assuming that "at least some recipients of aid would be Christians and girls" (p. 2).

The second type of donor restriction problem occurs when the donor's purpose, as evidenced in the terms of the gift, is not genuinely charitable. A common form of this problem is the establishment of a trust described in such a way that only one individual can benefit from it. This situation is illustrated in Marriner W. Merrill Family Foundation, Inc. v. State Tax Commission (1955), in which, as reported by Alexander and Solomon (1972), "a 'family foundation' established for the purpose of receiving gifts and lending money to the founder's descendants and their husbands and wives for educational purposes was held not to be a charitable corporation by a Utah court" (p. 273).

Altering the Conditions and Restrictions of Gifts and Bequests

As noted in the preceding subsection, restrictions placed on gifts can under certain circumstances be altered by the courts under the doctrine of cy pres. According to Alexander and Solomon (1972), the doctrine of cy pres "has been employed since Roman times as an alternative to legacies which were impossible to perform" (p. 274). Scott (1967) has summarized the thrust of cy pres as the recognition of the inherent authority of the court to alter trusts if necessary. There are three prerequisite conditions for the application of cy pres according to Alexander and Solomon, including "(1) the existence of a charitable trust, (2) the impossibility or impracticality of abiding by the settlor's specified intent, and (3) the existence of a general intent rather than or in addition to the specific intent on the part of the settlor" (p. 274). The key legal issue in determining whether or not cy pres can be applied, according to Scott, is whether the "particular purpose was an essential part of the testator's plan" (section 399.2, p. 3110), an interpretation which adds to the significance of the prerequisite of a general charitable intent. For example, in Application of Syracuse University (1958), the court declined to apply cy pres when it decided that the transfer of control of the Syracuse University Medical School to the State University of New York created circumstances which were beyond the general intent of a benefactor who had established a trust for the Medical School with a specific intent to encourage its independence.

The actual and potential usefulness and limitations of the cy pres doctrine by colleges and universities in the alteration of donor restrictions is illustrated in several cases. In Bell v. Carthage College (1968), a church-affiliated private college moved from Illinois to Wisconsin, and another college took over the vacated Illinois campus. Cy pres was applied by the court to redirect the proceeds of a local trust to the new college, but on appeal, the application of

cy pres was reversed, and the trust followed the original college to Wisconsin. In a related case reported by Brubacher (1971b), The Little Rock Junior College v. George W. Donaghey Foundation (1955), the Supreme Court of Arkansas applied cy pres to uphold the validity of a trust for the recipient two-year college when it became a four-year institution.

The doctrine of cy pres has frequently been used to alter such illegal restrictions as those discriminating on the basis of race or religion. As established in Bank of Delaware v. Buckson (1969), cited in Section II, above, Constitutional prohibitions support (or make unnecessary) the application of cy pres in cases involving discriminatory restrictions at public institutions, although, as Scott (1967) has observed, cy pres is not automatically applied even in cases of racial discrimination (the trust simply fails and reverts to legal heirs).

In private institutions where the "state action" link to the Constitution does not exist, a number of private colleges and universities have been able to alter racially or religiously discriminatory restrictions under the cy pres doctrine. In Coffee v. William Marsh Rice University (1966) reported by Alexander and Solomon (1972), a Texas court authorized the University to disregard the restriction of the original trust and charter against admitting Negroes (as well as the restriction against charging tuition) via cy pres "in order to allow fulfillment of the dominant intent of the donor. . . to establish a first class, high quality institution" (p. 549). In this case, the court reasoned that a segregated institution could not retain first class stature (and a first class institution could not properly maintain itself without some tuition charges). With respect to religion, Brubacher (1971b) reported that in Howard Savings Institution v. Peep (1961), the New Jersey Supreme Court upheld the application of cy pres by a lower court in order to eliminate a Protestant-

Gentile restriction in a trust established pursuant to a 1957 bequest to Amherst College.

Chambers (1972) described a case which illustrates an application of the doctrine of cy pres to accommodate changing circumstances. In Wilbur v. University of Vermont (1968, 1970), the Supreme Court of Vermont allowed the alteration of the terms of a 1928 trust which in effect established enrollment ceilings in the College of Arts and Sciences at the University; if the ceiling enrollment conditions were not met, the corpus of the trust was to be transferred to the Library of Congress Trust Fund Board. When the enrollment limitation was exceeded, an alteration of the restriction was applied for and granted under cy pres by the trial court, and later affirmed when the heirs sued for enforcement of the terms of the trust. The rationale of the court reported by Chambers included the conclusion that:

> The changing circumstances and policy considerations which have developed since the trust was created justified the trustees of the University of Vermont to petition the court of chancery for a modification of the terms upon which they held and administered the Wilbur gift (p. 71).

Finally, Scott (1967) has noted that the doctrine of cy pres may be used to authorize the application of a surplus in a trust. Where the established or developed fund is larger than its stated purpose, a court can broaden the legitimate applications of the trust in a manner consistent with the general purpose of the trust. It is possible that the University of Kentucky will ultimately pursue such a course with respect to the multi-million dollar bequest referred to in Section III in order to more fully utilize the funds available in accomplishing the general purposes of the gift.

Institutional Trustee Management Responsibilities

As described in Section II, a common form of private giving to colleges and universities is the "two-party trust" in which the donor establishes a trust

for which the institution assumes the dual responsibilities of beneficiary and trustee. In such instances, potential legal problems are associated both with the investment policies and practices of the institution's governing board, and with the institution's more generalized fund management activities.

Concerning the former, Wheeler (1975) has clarified the central issue and, on the basis of a 1951 opinion of the New York Attorney General, identified the determining factor in his statement that "with respect to investments, are the trustees (e.g., institutional governing boards) strict trustees or are they something else, more resembling directors of business corporations? In the area of investments, in New York, at least, corporate law, rather than trust law, governs" (p. 212). The importance of this determination made on the basis of relevant state statutes is reflected in the substantially more restrictive or conservative guidelines on investment practices for fiduciaries, or "technical" or "strict" trustees. According to Wheeler, individual states frequently establish lists of approved (i.e., "safe") investments for fiduciaries, with the primary intention of protecting rather than increasing the amount held in trust. Further, Wheeler noted that under the law of charitable trust, a college or university is prevented from "borrowing" from trust funds to meet temporary cash flow problems, is constrained from comingling trust funds in order to simplify administration or to facilitate investment, and is not allowed to delegate investment decisions to persons other than members of the governing board. With respect to the first limitation, corporate law allows "borrowing," by construing the practice as a form of investment and requiring repayment with interest. The latter two limitations are illustrated in an example at the University of Kentucky explained by Darsie (1977). Prior to the adoption of the Management of Institutional Funds Act (K.R.S. 273.510-273.590) in 1976, the Board of Trustees of the University was legally prohibited from comingling

restricted, or trust, funds or delegating investment decisions. Accordingly, the University was unable to take advantage of the strength of a college and university investment consortium, the Common Fund. The comingling of restricted funds for investment purposes and the delegation of investment authority are authorized by K.R.S. 273.540 and 273.550, respectively.

The Management of Institutional Funds Act also clarified the "standard of conduct" by which managers of institutional funds are to be judged with respect to investment performance. The provisions of K.R.S. 273.560 that "members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision" (emphasis added) clearly point to a corporate standard, thus encouraging institutions to assume a more aggressive investment posture.

However, with respect to investment "standards of conduct," it should be noted that statutory authorization for a particular investment posture is not always the determining factor in the selection of an investment strategy. In Toledo Trust Company v. Toledo Hospital Et al. (1962) reported by Chambers (1967), an Ohio court ruled that a condition of a bequest requiring investment only in federal or Ohio government interest-bearing securities took precedence over a broader trust investment authorization in applicable Ohio law. The court also concluded that an alteration of the terms of the trust could not be accomplished under cy pres. Concerning the latter point, Scott (1967) advised that, where specific investment conditions are included in a gift, alteration via cy pres is appropriate only when such conditions are illegal or destructive to the investment principal.

In terms of general trust or restricted fund management activities, at least three potential problems are relevant. Magarrell (1976) reported that the adoption of a "total return" investment policy is a growing trend among

colleges and universities, replacing the more traditional "income" policies. The principal difference between the two policies is that under a total return policy, an institution calculates its earnings from investments on the basis of dividends, interest, and market appreciation, thus making more funds available for current use. According to Magarrell, 64 percent of the institutions surveyed by The Chronicle of Higher Education were operating under total return policies, and, for fiscal 1975, these institutions received 16 percent of tneir operating revenues from endowment earnings as opposed to eight percent for institutions not under total return.

A second area of concern, closely associated with the determination of investment income, is the assessment of the value of a particular gift. According to University of Kentucky Comptroller Henry Clay Owen (1977), most colleges and universities employ the Generally Accepted Accounting Principles (GAAP) "present value" concept whereby value is assigned at the time the gift is received by the institution. K.R.S. 273.510 recognizes this practice and institutionalizes it as "historic dollar value," or the "aggregate fair value in dollars" at the time of receipt. According to Owen, the institution appraises gifts for its own purposes, with the responsibility of appraisal for tax purposes left to the donor. Clearly, utilization of the present value approach is a prerequisite for the successful operation of a total return investment earnings policy. In Kentucky, the elements of a total return policy are specifically authorized by K.R.S. 273.520 (subject to the limitation of K.R.S. 273.530).

Finally, the actual administration of private donor funds is not cost-free--routine financial control costs can amount to thousands of dollars each year which must be supplied either from the income of the private funds or from other institutional sources. However, Blackwell (1960) has noted that

colleges and universities traditionally have "accepted endowments and other charitable funds entrusted to them without expecting or requesting compensation for the overhead costs involved in their administration" (p. 205). While trusts may include provisions for compensation for administrative costs, no cases were found relative to the question of whether the provision for such costs can be mandated by the courts. Interestingly, the legal issues associated with this question may be less important than the conflict between the management and ethical issues: sound financial management practices would encourage extraction of the fullest estimate of overhead costs, yet any invasion of the funds directly reduces the potential benefits available to those for whom the institution holds the funds in trust.

Other Administrative Concerns

There are multiple additional concerns within the broad and relatively institution-specific area of the administration of private donor funds which can be mentioned only briefly here. Such concerns include misappropriation of restricted funds, internal administrative procedures, emerging forms of private giving and donation "plans," and certain matters of legal ethics.

As opposed to embezzlement and other fraudulent uses of restricted funds, the principal concern with respect to misappropriation according to Blackwell (1960) is the inappropriate investment of endowment funds. A particularly common example is the use of such funds to construct dormitories and other campus facilities, styled as an investment. However, although such "investments" are considered unsound due to a lack of a reasonable degree of liquidity (a college dormitory in particular would seem to be a "frozen" asset), such an application of endowment funds would appear to be permissible under the "borrowing" feature of the corporate law model described in the preceding subsection.

According to University of Kentucky Comptroller Owen (1977), many colleges and universities have an internal financial control mechanism known as a "quasi-endowment" to protect large, basically unrestricted funds. Under this procedure, the governing board designates a specific portion of the gift to be treated administratively as an endowment, restricting current expenditures to the annual earnings of the endowment, thus extending the useful life of the gift. A legal test of the quasi-endowment practice has not been identified.

Public colleges and universities are, according to Darsie (1977), making more frequent use of the charitable remainder technique of giving, an approach which can be roughly characterized as a "living bequest." In such instances, property is given to the institution with the donor retaining use of it during his or her lifetime. The donor is able to claim a scheduled income tax deduction for the gift after deducting the value of the benefit retained (in the form of personal use). Included under this giving technique are unitrusts, charitable remainder trusts, and pooled income funds. In the pooled income approach, the institution creates a pool of securities to which private donors may give their securities; the institution issues shares to the donors, manages the investment, and distributes earnings to the donors. A potential legal problem with this approach is whether in issuing shares the institution is in fact issuing securities, and therefore must comply with the rules and regulations of the federal Securities and Exchange Commission (SEC) and similar state-level agencies. Darsie noted that the SEC had forwarded a "no action" letter in response to an inquiry on this point from the American Council on Education indicating that such operations were allowable within existing SEC guidelines. The SEC position does not apply to individual states, however, thus requiring an independent state-level determination.

A final potential problem generally associated with administrative activities relates to the professional conduct of the college or university legal counsel. The circumstances in which a problem might arise have been described by Williams (1975):

> a development officer will locate a donor . . . who is not presently represented by counsel, to the institution's attorney for assistance in drafting a gift instrument or will. In determining what to do in such a case (specific) American Bar Association Code of Professional Responsibility provisions are relevant (p. 254).

According to Darsie (1977), in such instances, the institution's attorney must be careful to avoid representing both the donor and the institution without the full knowledge and consent of each, as well as offering legal assistance to another lawyer's client.

V. CONCLUSION

In summarizing the legal problems in the solicitation and administration of private donor funds in higher education, two concluding observations seem particularly relevant. First, the entire area of private financial support for colleges and universities is inherently and perhaps predominantly legal in character, centering on the legal instrument of gift and the legal context in which it is executed. Second, the overall context for this legal activity is intensively state-specific, structured for the most part by relevant state statutes.

Neither of the preceding observations is intended to demean or otherwise discount the importance of the educational dimensions of private donor support. Rather, the intention throughout this paper has been to demonstrate the practical necessity of close cooperation and coordination between the legal and administrative personnel of colleges and universities in the full range of activities related to the solicitation and administration of private donor

funds. Such activities are intentional as opposed to spontaneous or occasional, and the successful and well-managed institution will recognize this distinction and respond accordingly. An institutional policy specifically encouraging *a priori* consultation, coordination, and cooperation will effectively minimize *a posteriori* difficulties.

REFERENCES

Alexander, K., and Solomon, E. S. College and University Law. Charlottesville, Va.: The Michie Company, 1972.

Allied Chemical Corporation, "Position Paper," Counsel (Marts & Lundy, Inc., New York), Winter, 1977, 4 pp. (Special Insert).

American Association of Fund-Raising Counsel. Giving U.S.A.: A Compilation of Facts and Trends on American Philanthropy for the Year 1975. New York: American Association of Fund-Raising Counsel, Inc., 1976.

Blackwell, T. E. College Law: A Guide for Administrators. Washington, D.C.: American Council on Education, 1961.

Brubacher, J. S. The Courts and Higher Education. San Francisco: Jossey-Bass, Inc., 1971 (a).

Brubacher, J. S. The Law and Higher Education: A Casebook, Volume II. Rutherford, N.J.: Farleigh Dickinson University Press, 1971 (b).

Chambers, M. M. The Colleges and the Courts: 1962-1966. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1967.

Chambers, M. M. The Colleges and the Courts: The Developing Law of the Student and the College. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1972.

Darsie, J. C., General Counsel, University of Kentucky. Personal interview, February 24, 1977.

"Fact File: Patterns of Giving to Higher Education," The Chronicle of Higher Education, XII, 5, March 29, 1976, p. 4.

Hopkins, B. R. "Regulation of Interstate Charitable Solicitations: Implications for Colleges and Universities," The Journal of College and University Law, 2 (Summer 1975), pp. 289-325.

Hopkins, B. R. "The Case for Federal Regulation of Fund Raising for Philanthropy," Philanthropy Monthly reprint distributed as participant materials for Council for the Advancement and Support of Education Workshop "Update on Fund-Raising Legislation," Washington, D.C., February 17, 1977.

Hornback, R. R., Vice President for University Relations, University of Kentucky. Personal interview, February 25, 1977.

"In Brief: University of Wisconsin Regents Criticized Over Gift Policy," The Chronicle of Higher Education, XIII, 11, November 15, 1976, p. 2.

Karst, R. L. "The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility," 73 Harvard Law Review, 433 (1960).

Kentucky Revised Statutes. "Management of Institutional Funds," K.R.S. 273.510-273.590, adopted June 19, 1976.

Kirch, P. C. "Are You Breaking the Law?" (Unidentified Source) reprint distributed as participant materials for Council for the Advancement and Support of Education Workshop "Update on Fund-Raising Legislation," Washington, D.C., February 17, 1977.

Magarrell, J. "College Endowments Recover from Slump," The Chronicle of Higher Education, XII, 18, July 12, 1976, p. 3.

Magarrell, J. "College Fund-Raisers Object to Disclosure Bill," The Chronicle of Higher Education, XIV, 1, February 28, 1977, p. 10.

Myers, J. H. "Recent Federal Tax Developments Affecting Colleges, Universities, and Donors," The Journal of College and University Law, 2 (Spring 1975), pp. 269-288.

Owen, H. C., Comptroller, University of Kentucky. Personal interview, March 2, 1976.

Scott, A. W. The Law of Trusts, Volume IV. Boston: Little, Brown and Company, 3rd Edition, 1967.

Scully, M. G. "Voluntary Support of Colleges Drops $80-Million in Year," The Chronicle of Higher Education, XII, 5, March 29, 1976, p. 5.

Simon, K. A., and Frankel, M. M. Projections of Education Statistics to 1984-85. National Center for Education Statistics, Education Division, U.S. Department of Health, Education and Welfare. Washington, D.C.: U.S. Government Printing Office, 1976.

United States Congress. The Congressional Record. 95th Congress, 1st Session; Volume 123, Number 1, January 4, 1977, pp. H79, E56-58.

Voluntary Support Committee, National Association of State Universities and Land Grant Colleges. Margin for Excellence and Opportunity: The Impact of Private Investment on Public Colleges and Universities (Monograph). Washington, D.C.: National Association of State Universities and Land Grant Colleges, August 1969 (ED 032 852).

"Washington Notes: Associations Oppose Fund-Raising Restriction," The Chronicle of Higher Education, XIII, 12, November 22, 1976, p. 7.

Wheeler, J. W. "Fiduciary Responsibilities of Trustees in Relation to the Financing of Private Institutions of Higher Education," The Journal of College and University Law, 2 (Spring 1975), pp. 210-228.

Williams, O. S. J. "The Code of Professional Responsibility and the College and University Lawyer," The Journal of College and University Law, 2 (Spring 1975), pp. 248-255.

TABLE OF CASES

A. P. Smith Manufacturing Company v. Barlow, 13 N.J. 145; 98 A.2d 581 (1953).

Application of Syracuse University, 3 N.Y. 2d 665, 171 N.Y.S. 2d 545 (1958).

Bank of Delaware v. Buckson, (Del. Ch.), 255 A2d 710 (1969).

Bell v. Carthage College, (Ill. App.), 243 N.E. 2d 23 (1968).

Coffee v. William Marsh Rice University, (Texas), 403 S.W. 2d 340 (1966), reversing (Tex. Civ. App.), 387 S.W. 2d 132 (1965).

Dodge v. Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (1919).

Howard Savings Institution of Newark v. Peep, 34 N.J. 494, 170 A. 2d 39 (1961).

In re Estate of Louis Lipsky, (Surrogate's Court, New York County), 45 Misc. 2d 320, 256 N.Y.S. 2d 429 (1965).

The Little Rock Junior College v. George W. Donaghey Foundation, 224 Ark. 895, 277 S.W. 2d 79 (1955).

Toledo Trust Company v. Toledo Hospital Et Al., 174 Ohio St. 124, 187 N.E. 2d 36 (1962).

Wilbur v. University of Vermont, (Vt.) 127 Vt. 284, 247 A. 2d 897 (1968); (Vt.) 27 A. 2d 889 (1970).